THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.6887 of 2007

Dated:05.04.2007

Between:

Rayala Venkateswarlu and others.

... Petitioner

AND

State of Andhra Pradesh and others.

... Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

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ORDER:

The six petitioners are allegedly sugarcane growers and members of Palair Co-operative Sugars Limited. They filed the instant Writ Petition seeking a writ of mandamus declaring the No Objection Certificate (NOC) dated 13.10.2006 issued by the second respondent, namely, the Panchayat Secretary, Rajeswarapuram Gram Panchayat, under which resolution No.2 dated 17.09.2006 was passed by the said Gram Panchayat in favour of the seventh respondent expressing no objection for increasing the crushing unit capacity of sugarcane from 1250 TCD to 3500 TCD, for establishment of Green Power plant of 20 M.W, and for establishment of 65 KLP Distillery Plant. They also seek further declaration that in case the seventh respondent proceeds the expansion activity, it will be purely at its own risk.

The bare facts necessary for disposal of this Writ Petition *in limine* may be noticed. As a policy of the Government, the sugar manufacturing unit of the fifth respondent was sold in a public auction. The sixth respondent became highest bidder for purchasing the sugar factory on as is where is basis. Subsequently, the Government transferred the sugar factory in favour of the seventh respondent, which is a subsidiary of the sixth respondent. Admittedly, the sale was confirmed by the Government, and the unit was handed over to the seventh respondent. The petitioners herein filed W.P.No.17493 of 2005 challenging the decision of the Government to sell Palair sugar

factory to the seventh respondent. In the said Writ Petition, the petitioners filed W.P.M.P.No.22272 of 2005 for suspending the sale deed dated 24.05.2004 in favour of the seventh respondent, W.P.M.P.No.22273 of 2005 seeking suspension of the sale and purchase agreement, W.P.M.P.No.22274 of 2005 seeking suspension of paragraphs 8 and 9 of G.O.Ms.No.72, dated 17.12.2003, and W.P.M.P.No.22275 of 2005 seeking appointment of Receiver to manage the affairs of the sugar factory. This Court ordered notice in those applications and they are pending.

After taking possession of the Unit, the seventh respondent submitted the application to the Gram Panchayat (second respondent) seeking NOC for expansion of the existing Unit as well as construction of the new plant in the existing sugar factory area in the premises at Rajeswarapuram. The Gram Panchayat passed resolution on 17.09.2006 and the Panchayat Secretary accordingly issued impugned NOC.

The learned Counsel for the petitioners strenuously contends that the Writ Petition filed by the petitioners challenging the transfer of Unit in favour of the seventh respondent is pending, and pending the Writ Petition, if the seventh respondent is allowed to expand the Unit, the same would further jeopardize the interest of the petitioners and large number of sugarcane growers within the factory zone of the Palair sugar factory. He nextly contends that transfer of the Palair sugar factory in favour of the seventh respondent itself is illegal and contrary to the provisions of the Andhra Pradesh Cooperative Societies Act, 1964, and therefore, the seventh respondent cannot be allowed to proceed with the construction or expansion facility.

Admittedly, the petitioners already filed W.P.No.17493 of 2005 and also filed four W.P.M.Ps seeking various reliefs. This Court did not pass any orders. Instead of moving the Court for necessary interlocutory orders or instead of moving another application for suspension of the impugned NOC, this Writ Petition is filed. For this reason alone, the Writ Petition is not maintainable. Secondly, in the absence of any order of suspension of the orders transferring the Unit to the seventh respondent, it is the legitimate right of the seventh respondent to seek expansion of the existing Unit and also to establish new crushing facilities. Such a right cannot be denied, especially, when Article 19(1)(g) of the Constitution of India guarantees fundamental right to carry on ones own business, which is not

prohibited by law. Further, whenever any construction is to be made within the jurisdiction of the Gram Panchayat area, as per the provisions of Section 120 of the Andhra Pradesh Panchayat Raj Act, 1994, read with the Andhra Pradesh Gram Panchayat Land Development (Layout and Building) Rules, 2002, such person has to necessarily seek building permission or NOC from the Gram Panchayat. That was precisely done by the seventh respondent. The Gram Panchayat considered all aspects of the matter and passed the resolution. The resolution passed by the Gram Panchayat can as well be agitated by filing an application before the Government who is alone competent to cancel the resolution under Section 246 of the Andhra Pradesh Panchayat Raj Act.

The Writ Petition is misconceived, and is accordingly dismissed. No costs.

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(**V.V.S.RAO, J**)

05.04.2007
vs